

QUID NOVI



Journal des étudiant-e-s
en droit de l'université McGill

McGill Law's
Weekly Student Newspaper

Volume 33, n°11
17 janvier 2011 | January 17ND 2012

QUID NOVI

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3661 Peel Street
Montréal, Québec H2A 1X1

<http://quid.mcgill.ca/>

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WANT TO TALK? TU VEUX T'EXPRIMER?

Envoyez vos commentaires ou articles avant jeudi 17h à l'adresse : quid.law@mcgill.ca

Toute contribution doit indiquer le nom de l'auteur, son année d'étude ainsi qu'un titre pour l'article. L'article ne sera publiée qu'à la discrétion du comité de rédaction, qui

basera sa décision sur la politique de rédaction.

Contributions should preferably be submitted as a .doc attachment (and not, for instance, a ".docx").

THOMAS
GAGNON-VAN
LEEUWEN

BON RETOUR!

On dirait qu'il y a à peine quelques jours que nous descendions la côte de la rue Peel pour aller livrer le dernier numéro du Quid Novi à Copie Nova de l'année 2011. En fait, c'était il y a presque deux mois!

Entre temps, il y a eu l'excellente soirée Law School of Rock au Divan Orange le 21 novembre, mettant en vedette les talents musicaux de nos collègues, dont une certaine Co-rédactrice-en-chef du Quid; la période d'examens, durant laquelle des étudiants zombifiés parcourent le pavillon NCDH semi-désert; la publication du rapport du Doyen Jutras, le 15 décembre, sur les événements du 10 novembre dernier; et, bien sûr, les vacances! Quoi que vous ayez fêté—Noël, Hannukah, le fait de vous retrouver parmi ceux que vous aimez ou le fait de vous retrouver sans lectures de droit—le Quid espère que vous revenez à la faculté avec une réserve d'énergie bien remplie.

La session dernière fut certainement l'une des plus éprouvantes pour McGill et la Faculté de droit. Il y a eu des débats enflammés sur la grève de MUNACA, la hausse des frais de scolarité, et l'intervention du SPVM sur notre campus—les sujets ne manquaient pas et les

pages du Quid ne furent pas épargnées. Nous souhaitons que l'hiver 2012 sera aussi riche en idées, mais plus riche en amour: à ce sujet, voir l'article de Krista Kais-Prial, "Where is the Love?", p. 4.

CONTRIBUTE TO THE QUID

Speaking of filling our pages with ideas, the start of a new semester is a great time to remind you of our submissions policy. The Quid is entirely submission-based: without your contributions, we wouldn't exist. So don't be shy! Submit an opinion piece, a literary creation or the poster for your upcoming event and we'll publish it if it meets our editorial policy (p. 16).

The deadline for every issue is Thursday at 5 p.m. Please send submissions by email to guid.law@mcgill.ca attached in a Word document that clearly includes a title and the author's name and year of study (1L, 2L, Graduate, etc.).

A happy new year to all! Nous avons hâte de vous lire.

Here at the Quid, we pride ourselves on our exhibitionism (in a non-corporal way of course...). Inspired by article 1604 CCQ, we thought we would share our New Year's resolutions...and resiliations with you!

Resolution: taken in the traditional, colloquial sense. Your goal for the year 2012.
Resiliation: taken in the contract law sense. A bad habit to which you are putting an end.

Thomas

My resolution: Tea over coffee.
 My resiliation: Perfectionism when doing Quid layout.

Amanda

My resolution: Self-confidence.
 My resiliation: Fear (and whining).

Hélia

My resolution: Passion-Life-Happiness.
 My resiliation: Frenzy-Nostalgia.

KRISTA
KAIS-PRIAL

WHERE IS THE LOVE ?

Editor's Note: we received this submission last November, after our final issue, but it is as relevant today as it was then, especially as we reflect on the past semester and the new year.

At first I thought I was being overly sensitive. Then I started talking to people about it, and they agreed – there are some seriously negative vibes happening up in this faculty, and it is not pleasant. It's all over the place! In the Quid, on facebook, on lockers, in hallways and in the classroom. The faculty seems to be divided into whispering, resentful factions.

I think everyone can agree that there's nothing wrong with heated debate, and that is what makes our faculty so exciting. Every day there seems to be a new controversy, a new juicy drama, a new "Did you hear about what so-and-so said about this topical issue? OMG." To a certain extent, this is healthy for us. We are being trained to make our points convincingly and to point out flaws in the counter-argument. We are being taught how to analyze texts until there's nothing left but shredded ribbons of paper. We are striving to be fast, thorough and sharp as a tack.

But damn, why we gotta be hatin' so much? Seriously.

Maybe it's that in a faculty with such bright, ambitious minds competing on the way to the top, we come to value "being right", or shouting the loudest, or being the most aggressive. But what about compassion? What about honouring your opponent's opinion in-

stead of spitting on it? What about attempting to understand the other side of things, and allowing room for the fact that your answer might not be the only right one? What about a little uncertainty, a little self-doubt, a little acknowledgement that there is a huge area of grey between the black and the white?

We are taught to be analytical. But maybe being constantly, mercilessly, robotically analytical causes detachment, isolation and division. Maybe we need turn off our brains once in a while, and turn on the cheese. If you're anti-union, hug a MUNACA supporter. If you don't want your tuition fees raised, look at your classmate's points and respect their reasons for thinking what they think. Allow yourself space to wonder if you're wrong. Find the good in people, and seek common ground.

You may think this is preachy, trite schlock. And you're probably right. But it's a rough time of year, and people are tired, and cold, and stressed, and what we all really need is some warm fuzzy words and a good hug. Let's smile! And relax! And focus on being kind rather than on being right. In the end we're all looking for the same thing for ourselves and for the world in general – stability, acceptance and peace.

BARREAU c ST-LAURENT, [2011] 1 FML 225

Keene JCQ presiding, today rendered judgment in a case of interest to law students, citizens, and those who make their living by selling legal services in the province of Québec:

The *Barreau du Québec* pursues André Richard for illegal practice of the profession of advocate, specifically for offering legal advice contrary to s 128(1)(a) of the *Act respecting the Barreau du Québec*.¹ If convicted, Richard faces a minimum fine of \$1,500, and possibly as much as \$20,000,² depending on my mood upon the day of sentencing.

The facts of the case are simple and largely agreed between the parties. Richard, who volunteered regularly at the McGill Legal Information Clinic, was alleged to have given legal advice pertaining to trade-marks on the 28th of September, 2011. It is admitted that Richard told a visitor to the Clinic that while descriptive words could not be trade-marked (such as the word “pizza” for restaurants) a fanciful combination of descriptive words (such as the well-known PIZZA PIZZA mark³) could very well be registered with the right disclaimers. A few days later, under somewhat murky circumstances, the Barreau got wind of this alleged advice. The rest, as they say, is judicial history.

Counsel for the Barreau rightly contends that s 128(1)(a) exists to protect the public, and on this question of law, she has the weighty authority of the Supreme Court behind him.⁴ An interesting question of fact is the extent to which the public is in need of such protection. Taking counsel for the Barreau at her word, there should be an ample body of case law in which the public is heroically defended from legions of unlicensed lawyers. In point of fact, counsel for both parties presented me with less than a dozen decisions. I confess to having been unable to find any more myself, nor is there any doctrinal commentary of note on the issue.

Turning to the case law – as even we civilians eventually must – I discern two competing currents in our jurisprudence. The first is fair, just, and reasonable. The second is incoherent and wrong-headed. For the reasons developed below, I prefer the latter.

The first current follows the holding of St-Pierre JCQ in *Barreau de L’Abitibi-Temiscamingue c Guidon*.⁵ In that case, the learned justice defined legal advice as follows:

Ce qui est du ressort exclusif de l’avocat, c’est de

¹ RSQ c B-1.

² Ibid, s 132; *Professional Code*, RSQ, c C-26, s 188.

³ See e.g. “Pizza Pizza & Design”, Pizza Pizza Ltd, Can No TMA488817, (30 January 1998), registered.

⁴ *Fortin v Chrétien*, 2001 SCC 45, [2001] 2 SCR 500; *Finney v Barreau du Québec*, 2004 SCC 36, [2004] 2 SCR 17.

⁵ *Barreau de L’Abitibi-Temiscamingue c Guindon* (1991), AZ-91031135 at 3-4, JE 91-777 (CQ).

donner des consultations et des avis d’ordre juridique; la seule lecture des mots nous laisse déjà entrevoir que dès que l’on consulte ou qu’on demande un avis, il y a matière à controverse ou à contestation, ou qu’on recherche une précision sur quelque chose qui n’est pas claire. ... [U]n avis, c’est plus qu’un renseignement ou qu’une information : cela requiert qu’on donne une opinion, ou un point de vue ou qu’on exprime sa pensée sur un sujet sur lequel il peut y avoir plusieurs opinions différentes. Et si ces avis ou opinions portent sur une matière d’ordre juridique, alors elles sont du ressort exclusif de l’avocat.

Thus it is not legal advice to answer a question which has only one clear and patently obvious response. For example, it would not be legal advice to tell someone that hairdressers in the Outaouais may not admit customers after 6 p.m. on Mondays, Tuesdays, or Wednesdays.⁶ Nor would it be legal advice to say that bingo events may not continue for more than 19 consecutive hours.⁷ Finally, one might safely warn a mystically-inclined friend that the practice of “witchcraft, sorcery, enchantment, or conjuration” is a criminal offense.⁸

Of course, this rule is not confined to statutes: clear and consistent case law (*jurisprudence constante* in French) may be explained without crossing into the realm of legal advice, since there is no possibility of controversy or legal opinion involved. For example, a student working at a legal information clinic could lawfully explain that attempted murder constitutes ingratitude justifying the revocation of a gift *inter vivos* (art 1836 CCQ).⁹

The approach outlined by St-Pierre JCQ has been followed several times by Québec courts interpreting s 128(1)(a).¹⁰

The second current, presently a minority of one, was articulated in the recent case of *Barreau c Charlebois*.¹¹ There, the Superior Court overruled an acquittal rendered

⁶ Decree respecting hairdressers in the Outaouais region, RRQ c D-2, r 4, s 5.07(2)(a).

⁷ Bingo Rules, RRQ c L-6, r 5, s 2.

⁸ Criminal Code, RSC 1985, c C-46, s 365(a). I note with some perplexity that section 365(a) criminalizes only “pretending” to practice witchcraft, sorcery, etc. Presumably Parliament intended possession of genuine occult powers to be a full defense under s 365(a).

⁹ See *Arpin c Arpin*, 2009 QCCS 6126 at para 125; *Desmarais c Ziggliotti*, [2003] RJQ 840 at paras 17-18 (CA); *Bresse c Audet-Lemay*, [2004] RDI 743 (CQ).

¹⁰ See e.g. *Barreau du Québec c Descôteaux*, 2007 QCCQ 6586; *Barreau du Québec c Québec (Procureur général)*, 2008 QCCS 897; *Barreau du Québec c Dumas*, 2006 QCCQ 12807; *Barreau du Québec c Charlebois*, 2007 QCCQ 116 (reversed, as we shall later see, by 2010 QCCS 6483, *infra* note 11).

¹¹ 2010 QCCS 6483.

by the Court of Québec, which had concluded that only legal information, and not legal advice, had been offered by the respondent-defendant.

The facts of *Charlebois* were undisputed, and as Fraser JCS himself admitted, “trivial.”¹² The facts were these: a co-proprietor of a condominium wished to vary the order of items on the agenda for an upcoming meeting of co-proprietors. The president of the association asked the respondent Charlebois whether this change to the agenda was permissible or not. Charlebois answered this question based on his understanding of the *Civil Code of Québec*, and in so doing paraphrased several of its articles. This, according to Fraser JCS, was fatal to the defendant’s case:

Ironically, for all practical purposes, the answer emerging from [the *Code Morin*]¹³ is little different from that arrived at finally by the respondent save that, as I have said in addressing the problem he permitted himself to embark on a consideration of various articles of the CCQ. In the process, unfortunately for him, he contravened section 128 (1) a) of la *Loi sur le Barreau* [sic].¹⁴

...
By deciding to frame his reply within the context of the articles of the CCQ cited above the respondent based his advice, at least in part, on the content of these articles and also upon his interpretation of them. ... In framing his answer as he did he effectively issued a legal opinion.¹⁵

Interestingly, this approach seems to criminalize merely talking about the law, or perhaps more narrowly, talking like a lawyer. While Justice Fraser was willing to consider that the simple copy-pasting of the *CCQ* is sufficient to avoid liability,¹⁶ venturing beyond this rather fragile limit would result in penal sanctions.

Neither approach is binding upon me, as both emanate from first-instance courts, and there is no Court of Appeal decision on this issue. Counsel proffered *Barreau du Québec c Québec (Procureur général)*,¹⁷ but it is manifestly not on point. The Court of Appeal in that case repeatedly emphasizes that they did not consider their ruling to touch on the concept of legal advice at all.¹⁸ Hence the choice is mine.

Representing himself, Richard vigorously argued that I should prefer the approach of St-Pierre JCQ over that of Fraser JCS. According to Richard, the narrow definition of legal advice used by Justice St-Pierre has much to recommend it: it favours access to justice, and provides a clear distinction between rightful and wrongful conduct. By contrast, Richard argues, the approach of Justice Fraser is fraught with numerous difficulties: under this approach

¹² *Ibid* at para 3.

¹³ For the benefit of my Anglophone readership: the *Code Morin* is the Québec equivalent to *Robert’s Rules of Order*.

¹⁴ *Charlebois*, *supra* note 11 at para 16.

¹⁵ *Ibid* at para 25.

¹⁶ *Ibid* at paras 21-22.

¹⁷ 2010 QCCA 1051 (CA).

¹⁸ *Ibid* at paras 23, 26, 29.

where is the line between information and advice? In a province where the *CCQ* may be purchased at Walmart, should citizens nonetheless be barred from quoting it to one another? Should the absence of harm to the public be relevant in a determination of guilt?¹⁹

These are powerful submissions, yet they overlook a judicial policy of critical importance. It is well established that the independence of judges depends upon their receipt of sufficiently generous salaries.²⁰ The same, *mutatis mutandis*, applies to lawyers. After all, lawyers owe a legal duty of independence to their clients.²¹ If lawyers are to be independent of the very clients who pay their salaries, it is essential that lawyers have many clients, for how can a lawyer be impartial if losing one client could pose a financial hardship? Hence preservation of the financial well-being of this province’s lawyers is the responsibility not only of the Bar, but of the Bench as well.²²

It requires a considerable investment of time and money to learn how to talk like a lawyer. The value of that investment must be protected. Trivial mandates, whether they involve incorporation, boilerplate contracts, or advice on self-evident matters, are among the most profitable mandates for lawyers. Without trivial mandates, realization ratios will plummet across the province.

Furthermore, the narrow approach advocated by Richard and St-Pierre JCS, creates a perilously slippery slope. What is next? Will the uninitiated be permitted to talk like judges? Perish the thought! I therefore adopt the broad approach of Fraser JCS, and declare unlawful all attempts to talk like a lawyer.

By providing advice on trade-marks, even self-evident advice, Richard nevertheless expressed an opinion on a legal subject and thereby violated s 128(1)(a) of the *Law respecting the Barreau*. I therefore:

FIND the defendant André Richard guilty.

ORDER the parties to appear in one week’s time to be heard on the issue of sentencing.

THE WHOLE without costs.

¹⁹ *Charlebois*, *supra* note 5 (“the public was hardly in jeopardy here nor for that matter were the co-proprietors of the Syndicat de copropriété L’Aristocrate” at para 4); contrast with *Barreau du Québec c Pelletier*, 2007 QCCQ 12493 (“Le but de cette loi étant la protection du public, le Tribunal doit nécessairement en conclure ici que personne n’a été lésé et que la *Loi sur le Barreau* n’a pas été enfreinte” at para 31).

²⁰ *Reference Re Provincial Judges Remuneration*, [1997] 3 SCR 3.

²¹ *Code of ethics of advocates*, RRQ c B-1, r 3, ss 3.00.01, 3.06.05, Division III § 5.

²² See *Barreau du Québec c Québec (Procureur général)*, *supra* note 17, for an admirable attempt by the Barreau to promote full employment of law school graduates in this province. See also the copyright case of *CCH Canada Ltd v Law Society of Upper Canada*, 2004 SCC 13, [2004] 1 SCR 339, where the Supreme Court adopted as “large and liberal” a definition of fair dealing as was necessary to permit lawyers in Ontario to avoid paying for things they had previously received for free.

NEGOTIATION SKILLS WORKSHOP

On November 14th, Professor Jay Hewlin from the Desautels Faculty of Management collaborated with the McGill Arbitration Society to host a 2 hour workshop on negotiation skills. The goal of the conference was to demonstrate the value of negotiation skills in the participants' personal and professional lives. Conference attendance was capped at 30 participants, to ensure an intimate environment where Mr. Hewlin would be able to engage directly with the students.

Professor Hewlin began his lecture by introducing the class to a number of modern negotiation theories, while inviting questions from the participants. He then ran a sequence of simulations intended to serve as case studies, demonstrating the strengths and weakness of various negotiation theories, while also highlighting the fallacies of a number of common negotiation assumptions. His simulations covered a broad spectrum of hypothetical scenarios, from negotiating a division of an orange between two parties to resolutions of classroom border disputes. A theme of negotiation creating mutual advantage ran through Mr. Hewlin's seminar,

and he made clear that he expected participants to leave with an appreciation that negotiations need not be zero sum games. The seminar was well received, and a number of participants sought out Mr. Hewlin's e-mail in order to continue their dialogues with him beyond the seminar.

Jay A. Hewlin is an attorney and consultant specializing in managerial effectiveness, leadership and employment law. He is a lecturer at McGill Faculty of Management, where he teaches Negotiations and Conflict Management. In addition to his legal experience, Mr. Hewlin is a seasoned manager and entrepreneur, having worked as an executive in private industry and managed his own corporation in New York. He has extensive experience in negotiating and drafting contracts. He received his Juris Doctorate from Columbia University School of Law and BA in Music from Boston University. He has published in The Corporate Counsellor, Columbia Law Review and Ovation Magazine. As well he authored a book titled: The First Fifteen Minutes (For Those Dating With Marriage in Mind).

**PAUL GIRARD
& ANDREW
BAKER**

LAW GAMES

NEITHER VANCOUVER NOR THIS YEAR'S 15 MCGILL LAW GAMERS MAY EVER BE THE SAME

Neither Vancouver nor this year's 15 McGill law gamers may ever be the same.

Cette année, les Jeux'ridiques ont eu lieu à UBC durant la première semaine de janvier. McGill, étant une des 16 écoles participantes, avait envoyé une équipe de 15 personnes. L'équipe était une des plus petites, mais une des plus enthousiastes. Pourtant, on a bien représenté McGill en portant des survêtements rouges à tous les évènements.

Law games is an annual four day event consisting of sports during the days and parties during the nights (though the two



are not mutually exclusive). For sports we participated in inner-tube waterpolo, dodgeball, kickball, soccer, and flag football under Vancouver's perpetually rainy skies. We lost every sport. Yet, for some reason, we managed to finish first in our heat, and second overall, in the prestigious polar bear swim which took place on Vancouver's famous Wreck Beach. We are lobbying to have this event instated as a full sport for next year's games.

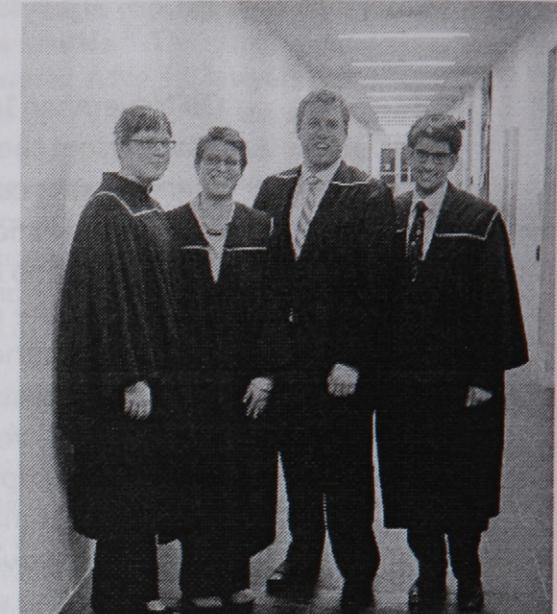
However there were other successes. Graham Splawski and Gab Joshee-Arnal maintained our honour by winning the moot, demonstrating McGill's intellectual prowess. The pair successfully defended

their client against charges of rioting and looting in the post-Stanley Cup turmoil in front of a panel composed of practitioners and UBC professors. We also won every competition in the pub crawl, proving that McGill law students are only good for two things: thinking and drinking.

Tout le monde a apprécié l'opportunité à rencontrer les étudiants de partout au Canada, malgré le fait que presque personne ne pouvait se rappeler de leurs noms. On a réussi à énervier les autres écoles de droit du Québec en chantant *God Save the Queen* à haute voix, en français (oui il existe une version traduite).

En tout, McGill était l'école le plus bruyante avec les meilleurs chants (M-G-C-I-L, we're so drunk we cannot spell, et beaucoup d'autres). Sherbrooke a tenu à sa réputation, en lançant une chaise du balcon du 30e étage de l'hôtel, et U Vic offrait à boire d'un fer à repasser rempli de gin.

Although Vancouver was a fun city to visit, most McGill students should be happy they live in Montreal. For unlike Vancouver, in Montreal, beers do not cost 8\$ at a



student organized party, and it does not rain every single day. However, copious bottles of rye helped remedy the problem of expensive drinks, and Vancouver is in a very pretty location, when it's not obscured by rain.

To those who missed this year, fear not, you are all welcome to attend next year's law games, whose location will be determined this spring. Thank you to UBC for organizing the event, but most of all to all of McGill's team who came out to make this year's law games one of the most fun times we've ever had.



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LES GRANDS AVOCATS DU MONDE SONT AVANT TOUT DE GRANDS CITOYENS DU MONDE.

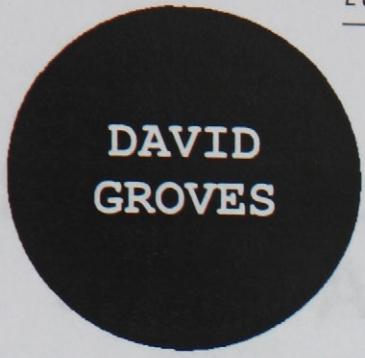
À notre cabinet, vous travaillerez avec des avocats ayant conclu des transactions de plusieurs milliards de dollars, d'autres ayant représenté des premiers ministres et d'autres encore ayant plaidé devant la Cour suprême des causes qui ont fait jurisprudence. Qu'ils courrent des marathons, vivent de grandes aventures ou se dévouent pour des causes humanitaires, vous verrez que les membres de notre équipe comptent plusieurs êtres d'exception. Chaque année, dans le cadre de nos programmes d'emplois d'été et de stages, nous cherchons à identifier des étudiants qui, tout comme nous, conjuguent leur coup de cœur pour le droit à un profond désir de se surpasser.

Nous ne sommes pas seulement à la recherche d'avocats exceptionnels, mais surtout d'êtres d'exception.

Pour consulter les fiches biographiques de nos avocats et voir si BLG répond à vos aspirations, visitez le site blg.com/etudiants.

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DAVID
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THE OPTIMIST

A TALE OF TWO RACES

Every four years, the United States turns its eyes to the suddenly pivotal states of Iowa and New Hampshire, to watch a small number of people (this year, 122,000 and 239,000 respectively) nominate candidates for the presidency. The whole affair has taken on almost ritualistic qualities, full of hand-shaking, baby-kissing, midnight voting, and pilgrimages to “local diners” to pray before the patron saint of American politics, the Average Voter. This year was no different, and the Republican nomination process has already eaten up months of airtime, rainforests worth of newsprint, and terabytes of breathless blog analysis, all eagerly consumed and discussed. Come March 24, the New Democratic Party will also elect a new leader, a position that, while significantly different from that of Republican presidential candidate, is no less important in defining the choice Canadians will (eventually) have to make. But our minority leadership race has been about as exciting as a visit to the DMV. Turn to the Globe and Mail and you get articles like “Topp tries to spice up NDP race with call to end corporate ‘gravy train’”, which sounds a lot like “Topp tries to spice up seniors’ cruise by spiking Jello tray”. If you need to spice something up, it means no one is eating it.

So how do we explain this? Why does the nominating process in the States arouse so much passion, but here, you actually have to scrounge around for news on the NDP race? A flattering answer might be that as Canadians, we just like things quiet and non-confrontational, while our neighbours to the south like their politics like they like their monster truck rallies, all yelling and crashing and explosions. But as

an avowed American politics junkie, I can tell you I am far from the only Canadian spending most of his time reading about Newt Gingrich’s hair-cut or the various horrible things Rick Perry has written on rocks in his hunting property. American politics for Canadians is the ultimate spectator spot – we get all of the entertainment, but none of the “now-you-live-with-this” hangover, and we eat it up, even as we ignore things at home.

Part of the discrepancy is procedural. By a mix of deliberate self-aggrandizement and historical quirk, the primary system in the states has expanded into a months-long, multi-stage horse race. By contrast, the nominating process for the NDP takes place at a convention, all at once, and there’s only so much you can write about it before it actually happens. It’s a lot easier to generate a coherent narrative about a primary than a convention vote because every week or so the state of the race changes in a tangible way. Without much polling, political journalists are left to look at the candidate’s actual platforms, something that, in a chicken-and-egg way, they either can’t do well or don’t get enough public attention from to merit examining.

Another part is the question of relevance. Jack Layton was a unique opposition leader in the sense that he was electrifying and inspiring, but even he would have struggled under the mantle. Opposition leaders under a majority government have about as much ability to direct government policy as Rick Mercer does – it’s really just a soap-box from which you position an electoral push a few years down the road. In America, by contrast, the

leader of the other party almost always has a realistic shot at the presidency, especially during a recession, and they don’t have to wait patiently in the legislature to take it. Also, the Presidency of the United States is kind of a big deal. Even if our elections were settled American Gladiator-style, with the candidates climbing up walls while their opponents fired dodgeballs at them, people would still pay more attention to Mitt Romney than Tom Mulcair because Mitt Romney might eventually get to walk around with the nuclear launch codes.

Beyond all that, though, we’re just not a country that gets all that interested in our politics. Voter turnout for last year’s federal election was 61.4%, which is better than 2008 but still pretty pathetic (to be fair, American turnout in 2008 was 57.4%, but that’s still a lot more people and so a lot more conversation). I won’t play pop psychologist and try and explain this apathy, but I will say that it’s the reason we get what we get. Harper prorogues parliament; the country yawns; politicians learn a valuable lesson. The NDP leadership candidates put their platform out to the public; only die-hard politicos look into it; those candidates learn a valuable lesson about not wasting their limited time and resources on national outreach. Politicians are nothing if not coldly responsive to our laziest instincts, and when we reinforce that laziness they recognize they’re playing their hands right. In other words, either we start paying attention, or there will be less and less to actually pay attention to.

LAEKA REZA
& HÉLOÏSE
APESTÉGUY-
REUX

HONOURING ALEX HELP ESTABLISH THE ALEXANDRA DODGER MEMORIAL AWARD

This past weekend marked the third month anniversary of Alexandra Dodger's passing. For those who knew her, coming to terms with her death has been a sad and surreal experience. We miss her infectious smile, her sharp wit, her embracing warmth and the passion with which she lived her life.

Alex came from humble roots and worked hard to achieve her academic credentials, all the while, making a difference for so many other people. Shortly after her death, one of her friends commented that it is hard to imagine a world without Alex fighting for change in the decades to come. Even those who never met Alex share this sentiment.

C'est pour cela que nous voulons créer, en tant qu'amis d'Alex, la **Bourse Alexandra Dodger / Alexandra Dodger Memorial Award** à la faculté de droit de McGill. Elle serait accordée à un étudiant ou une étudiante de première année ayant besoin d'aide financière et qui partage l'engagement d'Alex envers les démunis.

Nous faisons appel à la communauté de la faculté de droit de McGill pour nous aider à faire de cette bourse une réalité. Pour établir une bourse permanente, nous aimerais recueillir 60 000\$. Toute contribution, quel qu'en soit le montant, sera la bienvenue et permettra à d'autre personnes de continuer le travail qu'Alex ne peut plus faire.



Alex in Beirut in December 2010 (Photo Credit: Dina Awad, B.C.L./LL.B. 2011)

Please join us in making your contribution in the coming weeks as we will be providing a tally at the end of January for how much we have raised so far.

To contribute online:

- Visit McGill's secured donations page at <https://www.alumni.mcgill.ca/aoc/online-giving/> and enter your personal information;
- Click the "proceed to the next step" button. In the text box on the middle of the next page, enter **Alex Dodger Memorial Fund, Allocation 04984** and how much you would like to give;
- Again click the "proceed to the next step button" and confirm your details;
- Complete payment information and submit the form.
- All donations are tax deductible.

Ou vous pouvez remplir le formulaire de don à la page suivante.

Pour toute mise à jour au sujet de la bourse ainsi que pour les liens aux articles rendant hommage à Alex, visitez :
<http://alex dodger bursary.webstarts.com/index.html>

Merci de votre aide.



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EURIPIDES & HORNE

ESCARGOT : Envahisseur(e) Sis(e) Chez nous Avec Rien à Glander — Oust, Tabarnak !
SNAIL: Student Not Actually In Law

Editors' Note/Friendly Disclaimer: the content of the Quid Novi does not represent the opinions of its staff, the McGill Faculty of Law or McGill University. Nor those of Euripides.

QUID EDITORIAL POLICY

*It is Quid policy to publish our Policies and Operating Guidelines in the first issue of each semester.
The policy is also available on our website: quid.mcgill.ca*

Wherever possible, the Quid publishes everything submitted. However, to encourage a climate where each student will feel comfortable sharing his/her opinions, in rare circumstances, articles may be edited, and in extreme cases refused, at the discretion of the Editors-in-Chief.

While all submissions are presumptively publishable, potentially criminal speech (i.e. hate speech) and/or libellous speech are not presumptively publishable. In such cases the author must make a strong case that the information is accurate, that journalistic standards and ethics were followed; discretion to publish such articles lies solely with the Editors-in-Chief.

QUID NOVI POLICIES AND OPERATING GUIDELINES

The Quid belongs to students enrolled in the Faculty of Law at McGill University. It is essential that it maintains transparent policies and guidelines that take into consideration values such as the freedom of expression as well as interests such as those of students and faculty. The policies and operating guidelines are set forth below. Questions and comments may be directed to: quid.law@mcgill.ca. This policy is updated at the sole discretion of the Editors-in-Chief provided notice of update has been published in the Quid.

This version of the policy is enacted as of 2010. Its French translation is enacted as of 2011.

This document has five sections:

- 1) General Guidelines
- 2) Submission and Revocation Policy
- 3) Anonymous Submission Policy
- 4) Editing Guidelines
- 5) Content Review Policy
- 6) Notice and Amendment Process

1) GENERAL GUIDELINES

Every item appearing in the Quid Novi is an opinion piece that reflects only the views of the person (s) submitting the item. Neither the Quid Novi, the LSA, nor the Faculty of Law endorses any of the material or views contained therein.

Given the nature of the publication and its limited resources, the Quid will not undertake to evaluate the factual accuracy of submissions. Submissions are presumptively publishable unless they do not conform to the guidelines contained herein.

2) SUBMISSION AND REVOCATION POLICY

The Quid is a submission-driven publication. The deadline for submission shall appear in every issue. Articles submitted must include the author's name and year of study. If the author is writing in a particular capacity (i.e. 'LSA President'; 'Head of Student Club') this is to be indicated by the author.

No material submitted after the deadline shall be published without the express consent of the Editors-in-Chief. Late submissions will be slated for publication in the subsequent edition.

Articles submitted for publication may be revoked by the author. The Quid will honour all such requests provided they are made at least two days prior to publication. The Quid will do its best to honour a late revocation request, but will not stop the printing of an issue that has already gone to press.

3) ANONYMOUS SUBMISSION POLICY

The Quid will publish anonymous articles provided they conform to the Quid policy and operating guidelines. Anonymous ar-

ticles present a challenge for content review for they do not allow the Editors-in-Chief to consult with the author. As such, if an anonymous article is rejected for publication, notification of rejection must be published in the Quid.

4) EDITING GUIDELINES

Every item submitted to the Quid shall be reviewed. The Quid reserves the right to make grammatical edits to improve the readability or suitability for publication of an article. Editors may also correct spelling mistakes. If a submission requires significant editing - in the view of the first person reviewing the article - this shall be indicated to the Editors-in-Chief. The Editors may refuse to publish the article for lack of suitability, or may conduct significant edits and publish the submission. Minor edits need not be communicated to the author prior to publication.

5) CONTENT REVIEW POLICY

All submissions made to the Quid shall be reviewed for content. There is a four-step review process.

1) Review by Editor

The Editor assigned to review the article (or an Editor-in-Chief) individually reviews the submission for content they believe to be questionable. Questionable content is content that, in the appreciation of that respective Editor, is either potentially offensive, or potentially not suitable for publication. The following factors will be considered when assessing potential offensiveness: the overall tone of the submission, the specific word(s) used, the context in which they are used, coupled with an individual appreciation of the potential reaction to said material by the student body, professors, alumni, and the Montreal legal community. If, on balance,

any individual Editor or an Editor-in-Chief believes there is questionable content, this is communicated to the Editors-in-Chief.

Items that are potentially not suitable for publication include, but are not limited to: submissions that are too long or too short; submissions that have the potential to create a hostile environment for faculty or students; and submissions that are defamatory in nature.

2) Discussion

At the second stage of review, the Editors-in-Chief and Editor who did the initial review discuss their specific findings with one another in relation to the submission. If there is a finding of questionable content that is agreed to by a majority (i.e. at least two-out-of-three between the reviewing editor and the Editors-in Chief), the article goes for consultation. If there is no agreed finding of questionable content, the article is published as is, or with edits at the discretion of the Editors-in-Chief.

3) Consultation

At the Consultation stage, the Editors-in-Chief must advise the author that there is a content concern. The Editors-in-Chief may consult others about the submission, provided there is no information given identifying the author(s). The Editors-in-Chief may consult with any individuals mentioned in the article, fellow students, faculty members, and/or alumni, at the discretion of the Editors-in-Chief. Consultation is not a question of how-many-for vs. how-many-against; rather, given the nature and role of the Quid, consultation is premised on whether the specific content is suitable for publication. The author may be consulted numerous times if the Editors-in-Chief feel this is necessary.

4) Decision

The Editors-in-Chief will discuss the results of their consultations and will render a decision to: [a] accept the submission as is; [b] accept the submission with minor edit(s) to be completed by the Editors-in-Chief; [c] return the submission to the author for modification with suggestions provided at the discretion of the Editors-

in-Chief, or, alternatively, [d] reject publication without modification suggestions. The decision of the Editors-in-Chief is final and binding. The Editors-in-Chief, at their discretion, may publish a notice of rejection in the Quid with their reasons, indicating, at their discretion, the name(s) of the author(s). Alternatively, the author(s) may request that such a notice appear, in which case the notice will bear the format: AUTHOR -- YEAR -- TITLE OF SUBMISSION was submitted for publication but will not be printed in accordance with the Quid Policy and Operational Guidelines.

6) NOTICE AND AMENDMENT PROCESS

The Editors-in-Chief shall publish these guidelines in the Quid in the first issue of every semester. Changes may only be proposed by Quid staff. If there is a proposed change, it will be indicated in the next issue of the Quid with the opportunity for students to make submissions for a period of at least one week. Changes must be approved by a majority of active Quid staff. The Editors-in-Chief must publish notice of any change or change attempt in the Quid.

VERSION FRANÇAISE

Lorsque c'est possible, le Quid publie toutes les contributions qu'il reçoit. Cependant, dans le but de favoriser un climat où chaque étudiant sera confortable d'exprimer ses opinions, les rédacteurs-en-chef se réservent le droit de modifier des articles ou même, dans des circonstances rares, de les refuser. Ce pouvoir sera exercé à la discrétion des rédacteurs-en-chef.

Nous présumons que toutes les contributions sont dignes de publication. Néanmoins, des propos potentiellement criminels (i.e. le discours de haine) et des propos diffamatoires ne bénéficient pas de cette présomption. Dans de tels cas, l'auteur doit démontrer de façon probante que les informations contenues dans sa contribution sont véridiques et que les principes de la déontologie journalistique ont été suivis. La décision de publier ces articles relève uniquement des

rédacteurs-en-chef.

POLITIQUES ET PRINCIPES D'OPÉRATION DU QUID NOVI

Le Quid appartient aux étudiants de la Faculté de droit de l'Université McGill. Il est donc essentiel qu'il suive des politiques et principes transparents, qui prennent en considération la valeur de la liberté d'expression ainsi que les intérêts des étudiants et des professeurs. Les politiques et les principes d'opération sont exposés ci-dessous. Les questions et commentaires s'y rapportant peuvent être adressés à : quid.law@mcgill.ca. Cette politique est mise à jour à la discrétion des rédacteurs-en-chef, à la seule condition qu'un préavis de la mise à jour soit publiée dans le Quid.

Cette version de la politique s'applique depuis 2010. Sa traduction française date de 2011.

Ce document contient cinq sections :

- 1) Principes généraux
- 2) Politique de contribution et de révocation
- 3) Politique de contribution anonyme
- 4) Politique de correction
- 5) Politique de révision du contenu
- 6) Procédures de préavis et d'amendement

1) PRINCIPES GÉNÉRAUX

Chaque item apparaissant dans le Quid Novi est un article d'opinion qui reflète uniquement le point de vue de la personne ou des personnes qui ont écrit l'item. Ni le Quid Novi, ni l'AED, ni la Faculté de droit n'endorse les opinions contenues dans les contributions publiées. Étant donné la nature de cette publication et ses ressources limitées, le Quid ne s'engagera pas dans la vérification de la véracité factuelle des contributions.

Les contributions sont présumées dignes de publication, à moins de ne pas se conformer aux principes énumérés ici.

2) POLITIQUE DE CONTRIBUTION ET DE RÉVOCATION

Le Quid est une publication qui survit grâce aux contributions. La date limite pour les contributions apparaîtra dans

chaque numéro. Les articles soumis doivent contenir le nom de l'auteur ainsi que son année d'étude. Si l'auteur écrit dans un rôle particulier (i.e. "Président de l'AED"; "Président d'un club étudiant"), ceci doit également être indiqué.

Aucun item soumis après la date limite ne sera publié sans le consentement explicite des rédacteurs-en-chef. Les contributions tardives seront conservées et publiées dans le numéro subséquent.

Les articles soumis pour publication peuvent être révoqués par l'auteur, du moment que cette requête soit faite au moins deux jours avant la publication du numéro en question. Le Quid fera de son mieux pour faire suite à une requête tardive, mais il n'arrêtera pas la publication d'un numéro qui est déjà en impression.

3) POLITIQUE DE CONTRIBUTION ANONYME

Le Quid publiera des articles anonymes, à la condition que ceux-ci se conforment à ses politiques et principes d'opération. Les articles anonymes présentent un défi particulier pour la révision du contenu, car ils ne permettent pas aux rédacteurs-en-chef de consulter avec l'auteur. Ainsi, si un article anonyme est refusé, un avis de refus doit être publié dans le Quid.

4) POLITIQUE DE CORRECTION

Chaque item soumis au Quid sera révisé. Le Quid se réserve le droit de faire des modifications grammaticales afin d'améliorer la présentation et la lisibilité d'un article. Les rédacteurs peuvent également corriger les fautes d'orthographe. Si une contribution nécessite des modifications importantes, dans l'avis de la personne qui le révise, ceci sera indiqué aux rédacteurs-en-chef. Ceux-ci peuvent refuser de publier l'article ou bien effectuer des modifications importantes pour ensuite le publier. Les modifications mineures ne sont pas nécessairement communiquées à l'auteur avant la publication.

5) POLITIQUE DE RÉVISION DU CONTENU

Toutes les contributions au Quid seront révisées au niveau du contenu. Il existe un processus de révision comportant quatre étapes.

1) Révision par le rédacteur

Le rédacteur ou rédacteur-en-chef chargé de la révision d'un article accomplit cette tâche en vérifiant s'il contient du contenu contestable. Le contenu contestable dénote du contenu que le rédacteur en question juge comme potentiellement offensant ou autrement inadéquat pour la publication. Les facteurs suivants seront considérés lors de l'évaluation du potentiel offensant: le ton général de la contribution, les mots précis utilisés dans leur contexte précis, ainsi qu'une appréciation de la réaction potentielle du corps étudiant, des professeurs, des anciens étudiants et de la communauté juridique montréalaise. Si le rédacteur individuel estime que le contenu est contestable, il communique ceci aux rédacteurs-en-chef.

Les items qui sont potentiellement inadéquats pour la publication incluent (sans s'y limiter): les contributions qui sont trop longues ou trop courtes; les contributions qui possèdent le potentiel de créer un environnement hostile pour les professeurs ou les étudiants; et les contributions à nature diffamatoire.

2) Discussion

À la deuxième étape de la révision, les rédacteurs-en-chef et le rédacteur qui a accompli la révision initiale discutent de leurs conclusions spécifiques vis-à-vis l'article. S'il existe un consensus de contenu contestable parmi une majorité (moins deux sur trois parmi le rédacteur et les rédacteurs-en-chef), l'article procède à l'étape de la consultation. S'il n'existe pas un tel consensus, l'article est publié comme tel ou avec des modifications portées à la discréption des rédacteurs-en-chef.

3) Consultation

Au stade de la consultation, les rédacteurs-en-chef doivent aviser l'auteur qu'il existe des préoccupations au niveau du contenu. Les rédacteurs-en-chef peuvent consulter d'autres individus au sujet de la contribution, à la condition de ne fournir aucune information permettant d'identifier l'auteur. Les rédacteurs peuvent consulter avec des individus mentionnés dans l'article, d'autres étudiants, des pro-

fesseurs ou des anciens étudiants, à leur propre discréction. La consultation n'est pas un concours de "combien-sont-pour vs. combien-sont-contre". Compte tenu de la nature et du rôle du Quid, la consultation doit déterminer si le contenu spécifique est digne de publication. L'auteur peut être consulté à de nombreuses reprises si les rédacteurs-en-chef jugent que ceci est nécessaire.

4) Décision

Les rédacteurs-en-chef discuteront des résultats de leurs consultations et rendront une décision de: a) accepter la contribution comme telle; b) accepter la contribution avec des modifications mineures portées par eux-mêmes; c) retourner la contribution à l'auteur pour modification avec des suggestions portées à la discréption des rédacteurs-en-chef; d) rejeter la contribution sans offrir des suggestions. La décision des rédacteurs-en-chef est finale et incontestable.

Les rédacteurs-en-chef, à leur discréction, peuvent publier un avis de refus dans le Quid avec les raisons du refus ainsi que le nom de l'auteur. L'auteur peut également demander qu'un tel avis apparaisse; dans un tel cas, l'avis portera le format suivant: « AUTEUR --- ANNÉE --- TITRE a été soumis pour publication mais ne sera pas imprimé, en accord avec les politiques et principes d'opération du Quid ».

6) POLITIQUE DE PRÉAVIS ET D'AMENDEMENT

Les rédacteurs-en-chef publieront ces principes dans le premier numéro du Quid à chaque semestre. Des amendements peuvent être proposés uniquement par le personnel du Quid. Si un amendement est proposé, il sera indiqué dans le numéro subséquent du Quid afin d'offrir une opportunité d'au moins une semaine aux étudiants de rédiger des contributions. Les amendements doivent être approuvés par une majorité du personnel actif du Quid. Les rédacteurs-en-chef doivent publier un avis de tout changement ou de toute tentative de changement dans le Quid.

HELENA MCGILLENSIS: AN ODE

Words of fury and pride
Sail across seas of petulant froth,
"How dare you!", they cry;
Her patrician glance reduces their tears to weak broth.
Argentic hair matches silvery voice
Ringing out over students' stannic stammers of
"A B! A B!" Not of prosody do they speak;
Wounded minds in vitriolic tongues remedy seek.
"In the sweat of thy brow shall you find gain":
Helena's gentle wisdom laid out plain.
Pursuing their mistress with savage resolve:
"Thy pedagogy suspect! An error of fact!
A retrial of my genius!" Yet she will not absolve.
Not she of Troy do I sing,
But her name with Mediterranean spice does sting.
Die ägyptische Helena? Nein, mein freund.
Notre Me Lamed, notre Égérie ignorée, notre Sibylle méprisée!
Heed her words as you climb Peel — Parnassus is
Steep and B's are real.

OVERHEARD AT THE FAC

OVERHEARDS FROM 2011...

2L: Dans le fond, le droit de la famille, c'est simple. Les filles sont toutes des folles; les gars sont tous des violents contrôlants.

Prof. Gold: Do you own your children? From the practical point of view, they own you.

Prof. [redacted]: My cousin met the person who did the autopsy on Elvis and she says Elvis is dead.

Prof. Adams, re exam: No one dies in the fact-pattern!

Prof. [redacted] Yeah, I just blew that class. I want to take it out of next year's syllabus, I feel so scarred.

Prof [redacted]: Je vous rassure qu'un "B", c'est un bonne note. Sérieusement! Je sais que c'est dur de recevoir un B. Quand moi je recevais des "B"s en droit, mon petit coeur saignait...

Prof. [redacted]: I was a teenager in the 70s. If you were a teenager and you weren't taking drugs, you weren't a teenager.

...AND 2012

Prof. Gold: Common law is not that complicated, it's only messy. It's like vomit. I want you to engage in this vomit.

WANT TO READ OVER-HEARDS?

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quid.overheard@gmail.com

MONTRÉAL OTTAWA TORONTO EDMONTON CALGARY VANCOUVER

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—LAUREN PAGÉ,
MCGILL UNIVERSITY

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